

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**XPO LOGISTICS FREIGHT, INC.**

**and**

**Case 12-CA-179859**

**INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL UNION NO. 769**

**ORDER**

The Respondent's Motion to Dismiss the Complaint is denied. The Respondent has not demonstrated that the complaint fails to state a claim upon which relief can be granted. Further, the Respondent has failed to establish that there are no genuine issues of fact and that it is entitled to a judgment as a matter of law.<sup>1</sup>

Dated, Washington, D.C., May 25, 2017

PHILIP A. MISCIMARRA,	CHAIRMAN
MARK GASTON PEARCE,	MEMBER
LAUREN McFERRAN,	MEMBER

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<sup>1</sup> In its motion, the Respondent argues that if the complaint is not dismissed, the Regional Director should be ordered to provide a bill of particulars regarding the complaint allegations. However, on April 24, 2017, Deputy Chief Administrative Law Judge Arthur J. Amchan granted the request and ordered the General Counsel to clarify certain aspects of the complaint, and the Board has not received a request for special permission to appeal the judge's order. Accordingly, the Respondent's request for a bill of particulars is not before the Board.

Chairman Miscimarra agrees with the denial of the Respondent's motion as stated in the Board's Order. As he stated in *L'Hoist North America of Tennessee, Inc.*, 362 NLRB No. 110, slip op. at 3 (2015) (concurring), "[I]n response to a motion for summary judgment, I believe that the General Counsel at least must explain in reasonably concrete terms why a hearing is required. Under the standard that governs summary judgment determinations, this will normally require the General Counsel to identify material facts that are genuinely in dispute." See also *Leukemia & Lymphoma Society*, 363 NLRB No. 124, slip op. at 2 (2016) (then-Member Miscimarra, dissenting). In the instant case, the General Counsel has described, in reasonably concrete terms, why, based on material facts that are genuinely in dispute, a hearing is required.